

1904-072  
Lee Co.

Chancery Causes: Frank K. Wilson vs. J. W. Bales &c

Cobb, Shackelford, Turpin, Hunly, Terrill

CA - Debt  
T - Property  
Migration

- Deed



To the Honorable H.A.W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining your Complainant, Frank K. Wilson, would respectfully represent and show unto your honor that J.W. Bales and C.J. Bales are justly indebted, to your Complainant in the sum of One thousand dollars (\$1000.), which became due and payable on the 7th' day of March, 1902, with interest on the same from the 7th' day of January, 1902, till paid. Your Complainant alleges that the aforesaid amount, is justly, due owing and unpaid, and should bear interest from the time aforesaid, that your Complainant ought to recover at the least the aforesaid amount with its interest, subject to a credit of \$165. paid \_\_\_ day of \_\_\_ 1903, that said claim is further evidenced, by a judgment in favor of your Complainant, rendered against said defendants, in the Circuit Court of Madison County, State of Kentucky, a transcript from said record is here filed and made a part of this bill, marked exhibit "Bales", and prayed to be treated as part hereof.

Your Complainant further alleges that J.W. Bales and C.J. Bales are not-residents of the State of Virginia, and have estate in Lee County, Virginia; that C.J. Bales is the owner of a one-fourth, undivided interest in a tract of land situated in the Poor Valley, in Lee County Virginia, containing something like 500 acres, bounded on the North side, by the top of Cumberland Mountain, on the South side by Poor Valley Ridge, on the East by the lands of Mrs. Mary McLin, on the West by the lands of Frank Gibson, said interest in land is described in a purported or pretended assignment or Deed of Trust executed by C.J. Bales, on the 24th' day of Feb. 1902, to J. Tevis Cobb, and has been attempted to be admitted to record in the County Court Clerk's office of Lee County, Va. an attested copy of which is here filed as exhibit "Deed", and asked to be treated as part of this bill.

Your Complainant alleges that said pretended deed is void, because not under seal as a deed, that it is void and voidable as to the registry acts, and for the further reason that it was made to hinder, delay and defraud creditors of the said C.J. Bales, and especially your Complainant; that it is without consideration deemed valuable, in law; that J. Tevis Cobb Trustee and Jessee Cobb, are one and the same person, before whom the acknowledgement was taken, or

pretended to have been taken. \*And that said C.J. Bales owns a one-fourth interest in what is known as the Bales mill property and one-fourth interest in a tract of land containing about 200 acres situated near Laylor's, on the south side of Stone Mountain near lands of J. D. & H. J. Morgan.

\* That said defendant C.J. Bales has assigned and attempted to assign and dispose of all his estate in this County and State with intent to hinder, delay and defraud his creditors, especially your Complainant, that C.J. Bales is indebted to your Complainant in the sum of One thousand dollars (\$1000.), which became due and payable on the 7th' day of March, 1902, with interest on the same from the 7th' day of January, 1902, till paid. Your Complainant alleges that the aforesaid amount, is justly, due owing and unpaid, and should bear interest from the time aforesaid, that your Complainant ought to recover at the least the aforesaid amount with its interest, subject to a credit of \$165. paid \_\_\_ day of \_\_\_ 1903, that said claim is further evidenced, by a judgment in favor of your Complainant, rendered against said defendants, in the Circuit Court of Madison County, State of Kentucky, a transcript from said record is here filed and made a part of this bill, marked exhibit "Bales", and prayed to be treated as part hereof.



In tender consideration whereof and forasmuch as your Complainant is remediless in the premises save by the aid of a court of Equity he prays that the said J.W.Bales, <sup>B.F. Kinesaid</sup> C.J.Bales, and J.Tevie Cobb Trustee be made parties defendant to this bill and answer the same but not on oath, that being waived; that an attachment may issue, and the estate of the defendant C.J.Bales in Lee County Va. be attached, and sold or a sufficiency thereof to pay your Complainant's said debt of \$1000. *that said deed of trust or assignment not be set aside, but if not it be administered and enforced in your honor court.* aforesaid with its interest aforesaid; that order of publication be made, posted and published, that proper process may issue, and your Complainant prays for all other relief generally that the nature of his case may require or to equity seem meet and he will ever pray &c.

M.G. Ely P.Q.

Virginia, Lee County, to wit:

I, A.B. Munsey, Clerk of the Circuit Court for Lee County, do hereby certify that M.G. Ely Agent and Attorney, for Frank K. Wilson, this day personally appeared before me and made oath that C.J. Bales and J.W. Bales, are justly indebted to Frank K. Wilson in the sum of \$1000. with interest from the 7th day of January 1902, till paid, and to affirm belief the Plaintiff ought to recover at the least, the aforesaid sum with its interest, (subject to a credit of \$165. paid April 1st 1903.) and that the said C.J. & J.W. Bales are not residents of the State of Virginia, and have estate in Lee County and State of Virginia, and that C.J. Bales has assigned and disposed of and attempted to assign and dispose of his estate in Lee County Va. with intent to hinder delay and defraud his creditors especially the Plaintiff, and said affiant M.G. Ely Agent and Attorney, further made oath that he verily believes to be true every allegation made in the foregoing bill.

Given under my hand this July 16th 1903.

A.B. Munsey Clerk.



State of Kentucky,

) April Term, 1902,

Madison Circuit Court.

) April 7th, 1902

F. K. Wilson,

Plaintiff,

Vs.

Judgment by Default.

Joe W. Bales and C. J. Bales,

Defendants.

The defendant C. J. Bales having been duly summoned and failing to answer, it is adjudged by the Court that the said Plaintiff recover of the said Defendant ~~the sum~~ C. J. Bales, the sum of One Thousand Dollars, the amount claimed in the petition, with interest thereon at the rate of six per cent. per annum from the 7th, day of January 1902, until paid, and his costs herein expended.

State of Kentucky,

)

Madison Circuit Court

)

Sct.

I, S. H. Thorpe, Clerk of the Madison Circuit Court, do certify that the foregoing is a true and correct copy of the Judgment rendered herein, in the above styled action, on the 7th, day of April, 1902.

Given under my hand and Seal, this 8th, day June, 1903.

S. H. Thorpe

Clerk of the Madison Circuit Court.

State of Kentucky,

)

Madison Circuit Court.

)

Sct.

I, J. M. Benton, Judge of the Madison Circuit Court, do certify that the above, S. H. Thorpe, was duly elected, and is now acting as Clerk of the Madison Circuit Court.

This <sup>8th</sup>, day of June, 1903.

J. M. Benton

Judge of the Madison Circuit Court.



State of Kentucky,  
Madison Circuit Court.

) September Term, 1902,  
) September, 9th., 1902.

F. K. Wilson,

Plaintiff,

Vs.

Judgment by Default.

J. W. Bales, &c.,

Defendants.

The defendant J. W. Bales, having been <sup>duly</sup> summoned and failing to answer, it is adjudged ~~that~~ by the Court that the said Plaintiff recover of the said Defendant J. W. Bales, the sum of One Thousand Dollars, the amount claimed in the petition, with interest thereon at the rate of six per cent. per annum from the 7th, day of January, 1902, until paid, and his costs herein expended.

State of Kentucky, )

Madison Circuit Court. ) Sct.

I, S. H. Thorpe, Clerk of the Madison Circuit Court, do certify that the foregoing is a true and correct copy of the Judgment rendered herein in the above styled action, on the 9th, day of September, 1902.

Given under my hand and Seal, this 8th, day of June, 1903.

S. H. Thorpe Clerk of the Madison Circuit Court.

Clerk of the Madison Circuit Court.

Madison Circuit Court. ) Sct.

I, J. M. Benton, Judge of the Madison Circuit Court, do certify that the Above, S. H. Thorpe, was duly elected and is now acting as Clerk of the Madison Circuit Court.

This <sup>8th</sup> day of June, 1903,

J. M. Benton  
Judge of the Madison Circuit Court.



THIS INDENTURE made and entered into this Feb. 24th 1902, by and between C. J. Bales of the one part and J. Tevis Cobb of the other part, both of Richmond Kentucky.

Witnesseth, That whereas the party of the first part, the said C. J. Bales is indebted to various parties in different sum<sup>e</sup> of money and is unable at present to pay them all<sup>off</sup> and is desirous to treat all of his creditors alike, Now in consideration of the premises and one dollar (\$1.00) cash in hand paid the receipt whereof is hereby acknowledged, said first party C. J. Bales, has sold and does hereby convey to the said second party<sup>e</sup>, J. Tevis Cobb in trust for the benefit of all his creditors the following property to-wit; A certain parcel of land with improvements thereon situated in the town of Kingston, Kentucky, and bounded as follows; Beginning at a stake on the Northeast corner of the lot on which C. J. Wilmore lived, thence with said Wilmore's line S 56 N 13.5 poles to a stake on the Richmond and Big Hill pike, said Wilmore's corner, thence with said Pike S 37 E 19 .5 poles to a stake corner to the widow Lisle's corner, thence with the line of the said Lisle lot N 53.5 E 13.5 poles to a stake in said line, thence N 37 W 18.8 poles to the beginning containing one acre twenty-two rods and eighteen poles; also an undivided one-half interest in two certain lots of ground with ~~house~~<sup>Store</sup> house and dwelling thereon situated in the town of Kingston Ky. and Madison County bounded as follows; First Lot beginning at the northwest corner of Clarks and Witts Hardware Store on Main Street (Big Hill Pike) and running back 45 feet, and thence a parallel line with said street to Jno. W. Stivers land, thence with said Stivers land to Main Street, thence with Main Street to the beginning. Second Lot, beginning~~ing~~ at the southwest corner of Jno. W. Stivers storehouse and running back 45 feet, thence a direct line to corner of Clark and Ballards line, thence with Ballards line to Main Street, thence to the beginning (the remaining divided one half of this lot being owned by Dr. Kincaid); also an undivided onehalf interest in Lots 8, & 9, with improvements thereon, in Block No. 1 in the Corbin Improvement Company,



Addition fronting 50 feet on Center Street, and running back in the shape of a parallelogram 100 ft. to W. S. Rides land. The said lots 8 & 9 lie in Whitley County Ky. ;also an undivided one-fourth interest in what is known as the Bales land in Bell County Kentucky, bounded on the south side by the Cumberland Mountain, and the said tract contains about 600 acres and was owned by R. N. Bales at his death, and the grantor herein inherited a one-fourth interest therein ;also an undivided onefourth interest in a tract of land lying in Powells Valley in Lee County Virginia containing something <sup>like</sup> 500 acres, bounded on the North side bt. the top of the Cumberland mountain on the south side by Poor Valley Ridge, on the east by the lands of Mrs. Mary McLin: on the west by the lands of Fyank Gibson. The party of the first part also sells and conveys to the party of the second part in trust all his personal property of every kind and description ~~including~~ including notes demands, judgements and accounts belonging to or due or owing to the said first party.

The said second party is authorized and empowered to collect all demands due to first party, and to sell the real estate and the personal estate (if any) of the first party in such terms at such time and places and in such manner, public or private as he may regard in his judgment to be for the best interest of the creditors of the said first party; and the ~~said~~ second party is authorized and empowered to do all such acts and things, sign receipt, collect money, institute suits, and do whatever else <sup>that</sup> ~~what~~ he may regard is necessary to wind up this trust. The said second party shall proceed diligently and without unreasonable delay to wind up this trust. The grantee J. Trevis Cobb, after first paying off and discharging all the costs and expenses of this trust, will pay off the debts against the grantor if there be sufficient money realize from the sale of the property ~~thus~~ assigned but if sufficient money is not realized then the said grantee is authorized to discharge the residue of the money after the paymet<sup>u</sup> of cost ratably among the creditors of the grantor in proportion <sup>to</sup> ~~of~~ their claims respectively, treating all alike. Paying off preferred



claims if any first . If after the payment of costs and expenses and debts against the grantor there be an excess, then the second party shall convey same back to first party. The party of the first part hereby expressly reserve all right which he has in and to the property under the exemption law of the State of Kentucky and the same are not conveyed hereby.

C. J. Bales

I accept the foregoing trust.

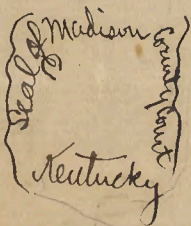
J. Tevis Cobb.

State of Kentucky, County of Madison Sct;

I, Jessee Cobb Clerk of the Madison County Court do certify that the foregoing deed of trust to J. Tevis Cobb was on the 24th day of February 190<sup>2</sup><sub>1</sub> acknowledged by C. J. Bales to be his act and deed and the same was lodged D. B. and is with this certificate duly recorded in my office.

Witness my hand this Feb. 24th 1902.

Jessee Cobb Clerk.



Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County, the 27th day of February 1902. The foregoing writing was presented, and together with the certificate thereto annexed, admitted to record.

Teste; B. M. Morgan, Clerk.

A Copy Teste; B. M. Morgan ----- Clerk.  
(D. B. 38 page 396 &c)



C. J. Bales  
To } Deed  
J. Davis Cobb Trustee

Copy

"Deed"

Clerk \$1.00



# The Commonwealth of Virginia:

*To the Sheriff of the County of Lee, Greeting:*

WE COMMAND YOU, that you summon *J. M. Bales and L. J. Bales*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules  
to be held for the said Court, on the *3rd* Monday in *June* 190*3*,  
to answer to a bill in chancery, exhibited against *them* in our said Court by  
*Frank K. Wilson*

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at  
the court-house, the *4th* day of *June* 190*3* and in the  
12 *7th* year of the Commonwealth.

*A. B. Munsey Clerk*



Executed by levying this attachment on the one-fourth undivided interest of C. J. Bales in a tract of land situated in Lee County Va, near Rose Hill same tract containing about 500 acres and is bounded on the north by the top of Cumberland Mt, on south side by Poor valley ridge, on east by lands of Mrs. Mary McLean and west by lands of Frank Gibson. This June 6<sup>th</sup> 1903 and further executed June 8<sup>th</sup> by levying and attaching the interest of C. J. Bales in the Bales mill property and one-fourth interest in 30 acres of land situated in Lee Co. Va. near C. R. Morgans on south side of stone Mt, no tenant being in possession of said lands. W. J. Milneham S. L. C.

Form No. 300 1/2

Frank H. Wilson

SUBPOENA  
IN  
CHANCERY.

vs.

J. Chas. & Co. J. Bales

M. H. Eley p. q.

To 2nd June Rules

1903, Lee Circuit Court.

The necessary affidavit having been made and filed the officer to whom this subpoena is directed will attach the real estate owned by C. J. Bales situated in Lee County Va. Shown under my hand this the 4th day of June 1903. A. B. Munnery Clerk



In the Clerk's Office of the Circuit Court of the County of  
Lee June 4<sup>th</sup> 1903.

F. H. Wilson  
against  
J. W. Bales and C. J. Bales

In Chancery -

This day M. G. Ely agent and atty for F. H. Wilson made oath before me, A. B. Munsey -  
Clerk of the said Court, that the claim of the plaintiff asserted in this suit amounts to \$1000. at the last  
with interest thereon from Jan. 7<sup>th</sup> 1902 till paid  
and is just; that there is present cause of action therefor; that the defendant C. J. Bales is not a  
resident of this State; and that he (the affiant) believes the said defendant C. J. Bales  
had no estate and debts due him within the said County of Lee and state of Virginia.

Given under my hand as clerk of the said court, the day and year first above written.

A. B. Munsey Clerk



Frank K Wilson

vs. }

Affidavit for Attachment

vs.

Estate of Non-Resident Debtor.

J. M<sup>rd</sup> L. J. Bales

Filed June 4<sup>th</sup> 1903.

A. B. Munsey Clerk



1864

Frank Wilson Peff.

vs. ~~Billie~~ Billie Chancery

Co. J. Bales and others Deft.

Bill filed June 4<sup>th</sup> 1903.

Amended bill filed July 16<sup>th</sup>  
1903. A.B. Mearns Clerk



J. Tevis Cobb, Trustee, et al,

ads. In the Circuit Court for Lee County, Va.

F. K. Wilson.

.....

To the Hon. H. A. W. Skeen, Judge of the Circuit court for Lee County, Va.:

The separate answer of C. J. Bales to a bill filed in your honor's court by Frank K. Wilson against your respondent et al. For answer to said bill, or so much thereof as your respondent is advised that it is material that he should answer, answering he says:

That it is true that a judgement was rendered in the County of Madison and State of Kentucky against your respondent, as surety for one J. W. Bales, for the sum of One thousand Dollars, with interest from the 7th day of January, 1902, and the costs, as appears by the exhibit filed with the plaintiff's bill; and that out of the trust fund derived under the deed of assignment sought to be set aside by the plaintiff the said Wilson was paid the sum of \$163.87, on the 7th day of May, 1903.

That he is not the owner of a one fourth undivided interest in a tract of land situated in the Poor Valley, in Lee County Virginia, containing something like five hundred acres, or of any land whatsoever in said Valley in said county and State, or elsewhere. - He states that he did own a one fourth interest in about five hundred acres of land in Poor Valley in Lee County, Virginia, but that he does not own the same now and did not own the same at the time of the institution of this suit or the suing out of the attachment herein. He says that on the 24th day of February, 1902, he sold and assigned and conveyed for lawful and valuable consideration to J. Tevis Cobb, Trustee, of Richmond Ky., in this and in all other lands in which he had an interest, and he states that this sale, assignment and conveyance was and is now valid and binding.

He denies that the said deed is void, either because not under seal as a deed or for any other reason. He denies that it is void or voidable as to the registry act, or for the further reason that



that it was made to hinder, delay and defraud the creditors of the said C.J. Bales, and especially the complainant, or any one else. He denies that it was made to hinder, delay and defraud the creditors of said C.J. Bales, and especially this complainant, or any one else. He denies that it was without consideration deemed valuable in law. He denies that J. Tevis Cobb, Trustee and Jesse Cobb are one and the same person.

Further answering your respondent, says that on the 24th day of February, 1902, and prior thereto, he was financially involved by reason of his own and security debts, (being security on this complainant's debt in which J.W. Bales was principal), he was compelled to make and did make, under the laws of the State of Kentucky a voluntary assignment to J. Tevis Cobb, trustee, which assignment was for the benefit of all the creditors of your respondent in proportion to their respective claims, after the payment of the expenses of the trust; your respondent alleges that it was not the intent of your respondent in making said deed of assignment to hinder, delay or defraud any of his creditors, but his intention was, and is now to treat all his creditors exactly alike, and to this end made the assignment that all his said creditors might receive out of his estate fairly, legally and equitably their pro-rata share of the assets thus assigned to the said Cobb; and your respondent alleges that all his creditors, including the plaintiff in this suit, have been treated alike, as was contemplated under the said deed of assignment; your respondent alleges, that but for this deed of assignment, voluntarily made, certain creditors could, might and probably would have collected their debts to the exclusion of others.

Your respondent alleges that the said deed of assignment was made as other deeds are made, and that the same was duly acknowledged, and accepted by the said trustee and duly recorded in the office of the Clerk of the County Court for Madison County, Ky. where the said respondent then and now resides, and that the same was also duly recorded in the office of the Clerk of the County Court for Lee



County, wherein the said 500 acre tract of land is situated. Your respondent is advised that the said deed vested in the said J. Tevis Cobb, as trustee for the benefit of all said creditors, title to all the estate, real and personal of your respondent (and expressly and specifically the 500 acre tract of land sought to be attached in this suit) with all deeds, books and papers relating thereto belonging to your respondent at the time of the making of the said assignment, except the ~~pr~~ property exempt by the law under the laws of the State of Kentucky.

Your respondent further alleges that said J. Tevis Cobb, trustee, was proceeding with all reasonable dispatch to the sale of all the property assigned and a distribution of the proceeds of said sale among the creditors, as is by the law prescribed, and a final settlement of the trust imposed upon said trustee. Your respondent alleges that the matters involved under the trust created by said deed were before the County Court for Madison County Ky, for settlement and the attorneys for the said Wilson appeared in said court wherein said matter was pending settlement, and argued and insisted upon distribution under said trust deed, and on the 7th day of May, 1903 the said Wilson was paid and received out of the said trust fund the said sum of money above referred to. Your respondent is therefore advised that said Wilson is estopped to deny the validity of the said ~~deed~~ or to claim against its terms. Your respondent is advised that "when a grantee accepts a deed and goes into possession under it, he is bound by the conditions contained therein as effectively as if he had signed and sealed the instrument". (2 Boon on Real Prop. sec. 293) Your respondent is also advised that where "parties claim under a trust and come in and receive a part of the trust fund, will not be allowed afterwards to repudiate their action and claim against the trust". (Effinger versus Kenney trust. 92 Va., 245.) Not only has the said complainant already received his pro-rata share of the trust funds that have come to the hands of the said trustee, but he will continue to be paid his full pro-rata share of all moneys that will be realized out of the assets until



the whole of the the same are fully exhausted.

This defendant further avers that in said deed of assignment he did not even reserve a homestead, as by the laws of the State of Ky., he had a right to to, but assigned every thing he had except some household and kitchen furniture and enough money to supply him with provisions for one year, as provided for by Statute of the State of Kentucky; that he gave up practically every thing he had in order to pay off and satisfy ~~the~~ the claims of his creditors, and turned in for this purpose his homestead of one thousand dollars.

Your respondent further avers that on the day said assignment was made a proceeding was instituted in the Madison County Court Kentucky looking to the settlement of this trust, and that said proceeding is now pending in said court, and settlement has been proceeded with and conducted with all reasonable dispatch; and he avers that the said plaintiff appeared in said settlement and asked for and insisted upon distribution under said trust, and afterward did receive, as hereinbefore <sup>t</sup>sated, his pro-rata of the funds that have been converted into cash; which proceeding and the acceptance of said money under said trust your respondent is advised constitutes a perpetual bar to said proceeding in this court, and works an estoppel for him to deny the said trust or claim against it.

And now having answered the said complainants bill as fully as he is advised that it is necessary that he should answer, prays to be hence dismissed with his reasonable costs in this behalf expended, and he will ever pray &c.

*Quinnigan Bros.*

P.D.



Cents Received by  
Defendant vs.  
F. K. Wilson -

Murray - C.	.40
Sheriff -	.50
R. P.	10.40
Atty.	15.00
Exhibit	1.59
	<u>\$27.89</u>

C. J. Baker & Co.

Ads. 3 Assured  
of  
C. J. Baker -

F. K. Wilson Capt.



J.Tevis Cobb Trustee et al,

ads: In Chancery Circuit Court for Lee County

F.K.Wilson.

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To the Hon H.A.W.Skeen, Judge of the Circuit Court for Lee County:

The separate answer of J.Tevis Cobb, trustee, to a bill in chancery filed in this court by F.K.Wilson against your respondent et al.

For answer to the said bill, or so much thereof as your respondent deems it necessary that he should answer, answering he says:

That he has read the answer of his co-defendant C.J.Bales filed in this cause and desires to adopt said answer as the answer of your respondent in so far as it is applicable to the interest of your said respondent as trustee under the said deed of assignment in the case sought to be set aside.

And for further answer your respondent denies most emphatically that said deed was in any way intended to defraud the creditors of said C.J.Bales, but on the other hand your respondent believes and alleges that said deed of assignment was the best course that said Bales could have pursued under the conditions of his existing financial troubles, and it was made in order that all the creditors of said Bales should be treated exactly alike.

Your respondent further alleges that he has proceeded with all possible dispatch to wind up and settle the trusteeship, and is now proceeding to that end just as fast as it can be done under the circumstances.

And now having answered as fully as he is advised that it is necessary that he should answer, prays to be hence dismissed with his reasonable cost in this behalf expended. And he will ever pray &c.

Pennington Bros. P.D.



J. Lewis Cobb, Trust  
thru

ack 3 Answer  
of  
J. Lewis Cobb

F. K. Wilson

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Pennington Bros.  
ATTORNEYS AT LAW,  
JONESVILLE AND PENNINGTON GARVA.



Bales, et al,

ads.

Wilson.

To the Hon H.A.W. SKREEN Judge of the Circuit Court for Lee County Va.

The joint demurrer of C.J. Bales and J. Tevis Cobb, to a bill filed in this honorable court by F.K. Wilson against said demurrants and J.W. Bales.

Said defendants say that said bill is not sufficient in law to call upon them for answer, and for grounds thereof assign the following reasons;

- (1) Because the allegation of fraud alleged in the said bill is a conclusion of law, and the facts relied on to constitute the fraud must be alleged, which is not done.
- (2) The deed made by Bales to Cobb trustee, a copy of which is filed with said plaintiffs bill shows upon its face is a purchaser for valuable consideration and said plaintiff fails to allege in his bill that said Cobb the grantee therein had any notice or knowledge of any fraudulent intent of his grantor, C.J. Bales.
- (3) If the plaintiff means by his allegation in his said bill to say that the consideration of said deed was not a valuable one in law, as it appears upon its face, then such statement is contrary to a lawful construction of said deed.
- (4) Because the allegation that said deed is void because not under seal is a false statement of the law, and the bill in this respect is demurrable.
- (5) The plaintiff alleges that the said deed is voidable as to the registry act without sufficiently pointing out wherein it is voidable as to such registry act.
- (6) And for various other reasons apparent upon the bill and to be pointed out at bar.

Pennington Bros., P.D.



C. J. Bales, et al

acc 3/3 Demand

F. K. Wilcox -

- Filed in open Court  
by leave thereof July  
10th 1903.  
A. B. Murray Clerk



F. K. Wilson, et al. . . . . . Plff.

vs. (In Chancery.

C.J. Bales, et al. . . . . . Deft.

This cause came on this day to be heard upon the papers formerly read in the cause and the report of sale of M. G. Ely, filed May 7, 1904, and was argued by counsel.

On consideration of which, it is adjudged, ordered and decreed that said sale be approved and confirmed, and it further appearing to the court, that the whole of the purchase money has been paid and that the purchaser B. F. Kincaid, is entitled to a deed. M. G. Ely is hereby appointed a special commissioner to make and execute to B. F. Kincaid, a deed with covenants of special warranty to the lands purchased by him in this cause, and said deed having been made and filed, seen and inspected by the court, is approved and confirmed, and the purchaser, B. F. Kincaid will pay to M. G. Ely, commissioner, the sum of \$5.00 for making said deed for which execution may issue.

And nothing further remaining to be done this cause is stricken from the docket.



F. K. Wilson,  
vs.  $\frac{1}{2}$  Secre Final  
Le. J. Bales and others

En. C. B. No. 7,  
Page 472.

Enter this

H. A. W. Shum

May 20th 1904



F.K.Wilson, Complainant,

vs.

C.J.Bales, J.W.Bales & J.T.Cobb, Trustee, Defendants.

)  
)  
) Decree.  
)

This cause came on this day to be heard upon the papers formerly read therein, the depositions of witnesses, the demurrer of the defendants and motion of J.T.Cobb, Trustee, to quash the attachment as to the real estate conveyed to him by C.J.Bales and the attachment of the plaintiff against a tract of land containing 80 acres situated near Gaylor, Virginia on the south side of Stone Mountain near the lands of J.D. and J.H.Morgan, and an undivided one fourth interest in what is known as the Bales' Mill property, and was argued by counsel. On consideration of

all of which, the motion of the said *J.T.Cobb Trustee.* ~~C.J.Bales~~ to quash the said attachment as to said real estate conveyed to him, as

trustee, is hereby sustained, and said attachment as to said *& the said piece of the said Complainant as to said J.W.Bales Cobb* land is hereby quashed, and it is adjudged, ordered and decreed

that the said J.T.Cobb, Trustee, recover of the plaintiff his costs in this behalf expended, including an attorney's fee for \$15.00 to be taxed by the clerk, and all other *Costs* ~~costs~~ incurred by him in the prosecution of this suit. It is further adjudged,

ordered and decreed that the attachment of the said plaintiff, as to the said 80 acres situated as aforesaid and the said Bales' Mill property and the same is hereby sustained. And the said plaintiff will recover of the said J.W.Bales and C.J.Bales,

the sum of \$1000.00 with interest thereon from the 7th day of January, 1902 until paid, and the costs of this suit, *Subject to a*

*Order of 167.87, as of Jan 1 - 1903 -* K.M.G.Ely, who is hereby appointed a special commissioner for the purpose, will,

after having executed bond before the clerk of the County Court in the penalty of \$500.00 conditioned as the law requires, and after having advertised the time, terms and place of sale for

*is hereby dismissed*







F. R. Wilson

8 <sup>2</sup>/<sub>3</sub> Decree

C. J. Baucus  
Em. C. B. No. 7, 409.

Enter this  
decree July 17  
1904 -  
H. A. W. Stearn



F. K. Wilson

Guilford -

v.

For Chancery

C. J. Bales J. H. Bales & J. W. Cobb Trust. Defendants

This Court comes on to be

held upon the vice & amended bill

of the plaintiffs, the answers of the

defendants C. J. Bales & J. W. Cobb Trust, &

their motion to quash the attachment

issued in this case, & the answers

of said J. W. Cobb & C. J. Bales filed herein

by leave of Court, & the depositions

of witnesses which by agreement of

Counsel shall be read without objection.

holding thereof.

It was argued by Counsel - by

Counsel of course the questions

raised by said answers & the

questions raised by said motion to

quash said attachment are joined.

This Court is continued -



J. K. Wilson

7.  $\frac{3}{4}$  Dec

C. J. Balis et al

Recd. this  
Nov. 6, 1903

H. C. W. Stun.

Entered Nov. 6. 1903  
Chy. O. B. 7. Page 364



In the Circuit Court for the County of  
Lee, State of Virginia.

Frank K. Wilson,

Plaintiff,

VS. DEPOSITIONS FOR DEFENDANTS.

J. Tevis Cobb, Trustee,  
C. J. Bales,

Defendants.

----- ::-----

The deposition of C. J. Bales, taken at the law office of J. Tevis Cobb on Main St. next to the Richmond National Bank in Richmond, Ky., between the hours of 8 A. M. and 8 P. M., on the 25th day of Sept., 1903, and on Sept. 29th, 1903, to which time last mentioned the taking of said depositions was adjourned by agreement, as appears from written agreement on page 7 of these depositions, said deposition being taken before S. M. Templeman, a notary public within and for Madison County, Ky., to be read as evidence in behalf of the defendants in the action of F. K. Wilson vs. J. Tevis Cobb, Trustee, and C. J. Bales, defendants, pending in the Circuit Court for the County of Lee, State of Virginia; also the depositions of J. Tevis Cobb and Jesse Cobb, taken at the same place and on the said last named day, to wit, Sept. 29th, 1903, by agreement, before the said S. M. Templeman, a notary public within and for the County of Madison, State of Kentucky, the said last named depositions to be read as evidence in behalf of the defendants in the said action of F. K. Wilson vs. J. Tevis Cobb, Trustee, and C. J. Bales, now pending in the said Court.

The witness, C. J. BALES, being first duly sworn, deposes and says:

Direct Examination by J. Tevis Cobb.

Q.- Please state your name, age and residence ?

A.- My name is C. J. Bales, my age is fifty-four and my residence is Richmond, Kentucky.

Q.- Are you one of the defendants in the action of F. K. Wilson vs. J. Tevis Cobb, Trustee, and C. J. Bales, now pending in the Circuit Court for the County of Lee, State of Virginia ?

A.- Yes, sir.

Q.- What is your profession, Dr. Bales ?

A.- I am a physician.

Q.- How long have you been a practicing physician ?

A.- Thirty-two years.

Q.- Have you ever resided elsewhere than in Madison Co., Ky. ?

A.- I have resided in Lee County, Virginia.



In the Circuit Court for the County of  
Lee, State of Virginia.

Frank K. Wilson,

Plaintiff,

VS. DEPOSITIONS FOR DEFENDANTS.

J. Tevis Cobb,

C. J. Bales, &c.,

Defendants.

----- ::-----

The deposition of C. J. Bales and others, taken at the law office of J. Tevis Cobb, on Main Street, next to the Richmond National Bank, in Richmond, Kentucky, between the hours of 8 A. M. and 8 P. M. on the 25th day of September, 1903, pursuant to notice hereto attached, to be read in behalf of the defendants in the above styled cause now pending in the Circuit Court for the County of Lee, State of Virginia.

The witness, C. J. BALES, having been first duly sworn, deposes and says:

Direct Examination by J. Tevis Cobb.

Q.- Please state your name, age and residence ?

A.- My name is C. J. Bales, my age is fifty-four and my residence, Richmond, Kentucky.

Q.- You are one of the defendants in the action of F. K. Wilson vs. J. Tevis Cobb, Trustee, and C. J. Bales, pending in the Circuit Court for Lee County, Virginia, are you not ?

A.- Yes, sir.

Q.- What is your profession, Dr. Bales ?

A.- I am a physician.

Q.- How long have you been a physician ?

A.- Thirty-two years.

Q.- Have you ever resided elsewhere than in Madison County, Ky. ?

A.- I have resided in Lee County, Virginia.



Q.- Where were you born, Dr. Bales ?

A.- In Lee County, Virginia.

Q.- Did you own at any time any property in Lee County, Virginia ?

A.- Yes, sir.

Q.- Describe what property you did own in Virginia.

A.- At any time, you mean ?

Q.- Yes, sir.

A.- Just before the assignment I owned a one-fourth interest in about five hundred acres of land in Lee County, Virginia.

Q.- Well, how is that bounded in Virginia, Dr. Bales ? Just roughly ? How is this land bounded on the North ?

A.- By the top of the Cumberland Mountain.

Q.- Well, how is it bounded on the South ?

A.- By the Poor Valley Ridge.

Q.- How is it bounded on the East, Doctor ? By whose land ?

A.- By Mrs. Mary McLin's.

Q.- And how is it bounded on the West ?

A.- By the land of Frank Gibson.

Q.- Well, do you own that land now ?

A.- No, sir.

Q.- What became of it ?

A.- I assigned it.

Q.- To whom did you assign it ?

A.- To J. Tevis Cobb.

Q.- When did you assign it ?

A.- On the 24th day of February, 1902.

Q.- Dr. Bales, will you file with your deposition a copy of this Deed of Trust from yourself to me and make it a part of your deposition, marked, "Exhibit A" ?

A.- How is that ?



Q.- I ask you if you will file with your deposition a copy of the Deed of Trust and make it a part of your deposition, marked, "Exhibit A" ?

A.- Yes, sir.

Q.- What was the reason for your making this conveyance to J. Tevis Cobb ?

A.- For the benefit of my creditors.

Q.- Well, explain more fully what you mean by that ? Were you involved in debt ?

A.- Yes, sir.

Q.- What was your indebtedness, Doctor, at that time, approximately ?

A.- I don't remember; between \$8000.00 and \$9000.00, I suppose.

Q.- Were you compelled to make an assignment at the time you did, Dr. Bales ?

A.- Yes, sir.

Q.- Why were you compelled to do so ?

A.- My creditors were pushing me to pay them.

Q.- Had you enough money to pay all of your creditors ?

A.- No, sir.

Q.- What property did you have ? Is it embraced in your deed of assignment ?

A.- Yes, sir.

Q.- Well, you can tell the examiner what you had ?

A.- I had a residence house and lot in Kingston, Kentucky, a half interest in a store house and lot in Kingston, Kentucky, a half interest in a residence and lot in Corbin, Kentucky, and a one-fourth interest in five hundred acres of land in Bell County, Kentucky, and a one-fourth interest in about five hundred acres of land in Lee County, Virginia. I owned a one-fourth interest in what is known as the Bales-Mill property. There are some two hundred acres of land there; I don't know whether we own it



or not.

Q.- Is an effort being made now to establish your ownership to it , - that two hundred acres of land ?

A.- Yes, sir.

Q.- Well, when you made this deed of assignment, did you have any idea of this two hundred acres of land at all ? Did you know it belonged to your father ?

A.- Well, I had heard Father speak of it, but it had slipped my memory. At the time of the assignment I don't remember anything about it.

Q.- Well, how does it happen that you didn't embrace the mill property in your deed of assignment ?

A.- I just overlooked it. It is a small matter. It is only about, probably six or eight or ten acres.

Q.- And what is that six or eight or ten acres worth ?

A.- Not anything much. It is a strip of land that Father laid off. He had two mills there, - a saw mill and an old fashioned water mill, - and he just laid that piece of land off with these mills and it just stayed that way and he entailed it. It is entailed.

Q.- To what extent is it entailed, Doctor ?

A.- It is for the benefit of his grand-children.

Q.- That is for your children and the children of his children ?

A.- Yes, sir.

Q.- If I understand you, you do not even know whether this two hundred acres, or such quantity, in Lee County, Virginia, belongs to you all or not ?

A.- I do not. He only owned a half interest in it.

Q.- You father ?

A.- Yes, sir. The two hundred acres of land belonged to a man by the name of Marcum and my father; a piece of land they entered there in the mountain years ago; a piece of vacant land they



discovered there and entered it.

Q.- Was it your intention or not when you made this deed of assignment, to embrace all of your property in it ?

A.- I did intend it.

(The plaintiff objects and excepts to the whole of the foregoing question and the answer thereto.)

Q.- At the time you made this deed of assignment, did you know or remember that your father had any interest in this two hundred acres ? I mean, over and above the interest in the five hundred acres that you have referred to ?

A.- I did not remember it at the time.

Q.- Now, tell us where that two hundred acres, or whatever quantity it is, lies, roughly speaking ?

A.- Well, it is on the North side of the Cumberland Mountain; probably half way up the Cumberland Mountain.

Q.- Do you know how it is bounded ?

A.- I do not, no sir,

Q.- When, as to the deed of assignment, did you first receive information that that two hundred acres of land, or a part of it, belonged to your father ?

A.- Why, I did not remember anything about it until a short time ago, - probably two or three months ago. My brother said something about it; that some parties wanted to buy this land and wanted to buy our interest in it, - the interest of the heirs. That is the first I remembered anything about it.

Q.- How many heirs did your father have ?

A.- Four.

Q.- Name them, please ?

A.- Mrs. Mary McLin, Mrs. Hettie A. Fulkerson, W. W. Bales and C. J. Bales.

Q.- These four heirs owned the five hundred acre tract that you have



described and the 200 acre tract that you have described and the mill property that you have described ?

A.- Yes, sir.

Q.- Each a one-fourth interest ?

A.- Yes, sir, each a one-fourth interest.

Q.- This 200 acre tract lies near Kaylor, Virginia, doesn't it ?

A place known as Kaylor, Virginia, on the South side of the Stone Mountain near the lands of J. B. and H. K. Morgan ?

A.- That is the South side of the mountain.

Q.- The South side of Stone Mountain ?

A.- No, the Cumberland Mountain.

Q.- It avers here, the South side of Stone Mountain, three hundred acres.

A.- I don't know anything about that. The three hundred acres, I don't know anything about that at all. The 200 acres in which I owned an interest lies on the South side of the Cumberland Mountain.

Q.- Well, in this deed of assignment, did you assign everything you had ?

A.- Yes, sir.

Q.- Did you reserve a homestead ?

A.- No, sir.

Q.- You stated that your creditors were pressing you was one reason why you made the deed of assignment. What creditors especially were pushing you ?

A.- The Richmond National Bank was the creditor that was pressing me.

Q.- Was the plaintiff, F. K. Wilson, pressing any for the payment of his debt ?

A.- No, sir, not at that time.

Q.- How much was the debt of the Richmond National Bank ?



A.- It was about \$5,500.00, I think.

Q.- Well, you say they were pressing you; how was the Richmond National Bank pressing you ?

A.- Well, they wanted me to give a mortgage on my property to secure the debt and I failed to do it or declined to do it. I wanted to treat all of my creditors alike. They threatened to sue me and that is the reason I made an assignment for the benefit of all of my creditors.

Q.- Do you owe Mr. F. K. Wilson anything personally ?

A.- No, sir.

Q.- Well, how does he happen to have a claim against your estate ?

A.- As security for J. W. Bales.

Q.- Do you remember what the amount of his judgment debt is ?

A.- About \$1000.00. The principal is \$1000.00, plus the interest.

Q.- Do you know when he brought suit on it and when he procured judgment against you and Joe Bales ?

A.- The record shows that he got judgment on a *Apr. 7, 1902* for *from the 1st of Jan., 1902, until paid,* \$1000.00, and interest, and costs. *73.45* I signed this note for J. W. Bales to F. K. Wilson as security, in January, 1902. It was a sixty days note. He brought suit on same to the April term.

The taking of these depositions is adjourned by agreement until Saturday, September 26th, 1903.

*S. M. Templeman*

N. P. M. C.

The taking of these depositions is adjourned from September 26th, by agreement, to Tuesday, September 29th, 1903.

*This* September 26th, 1903.

*Wm. K. Mowbray*

Attorney for Plaintiff.

*J. T. Cobb*

Attorney for Defendants.

*\$1092.45  
to be paid to May 1st 1903 being*



Met pursuant to order of adjournment and the defendant continued the direct examination of C. J. Bales, who testified as follows:

Direct Examination by J. Tevis Cobb.

Q.- Dr. Bales, I think that there is some confusion about the property that you owned and assigned to me. Please recapitulate and re-state what property you did own at the time you made this assignment, to wit, on February 24th, 1902, and what you did assign ?

A.- I owned a residence house and lot in Kingston, Kentucky; a half interest in a store house and lot in Kingston, Kentucky; a half interest in a residence house and lot in Corbin, Kentucky; a one-fourth interest in five hundred acres of land in Bell County, Kentucky; and a one-fourth interest in about five hundred acres of land in Lee County, Virginia.

Q.- Is that all that you knew you owned at that time ? all the realty ?

A.- All except the Bales mill land.

Q.- Well, now, what is the area of that Bales mill property and what was it worth at the time of the assignment ?

A.- Well, I don't remember how many acres there are; probably eight or ten acres. It was probably worth eight or ten dollars an acre. It was poor land with nothing on it; no improvements on it now at all.

Q.- Since the assignment, have you and the heirs discovered that probably you owned a half interest in about two hundred acres of land lying on the South side of the Cumberland Mountain in Lee County, Virginia ?

A.- Yes, sir.

Q.- Did you know at that time that you owned this land ?



A.- I did not.

Q.- Do you know now that you own it ?

A.- I do not.

Q.- I will ask you if I did not suggest to you as your assignee that probably you did own this two hundred acres of land after I had made a visit to Virginia looking into the property.?

A.- As well as I remember, you did.

Q.- Now, Dr. Bales, the complainant (Wilson) makes this allegation in his bill: "That C. J. Bales owns a one-fourth interest in what is known as the Bales mill property and a one-fourth interest in a tract of land containing about three hundred acres, situated near Kaylor, Virginia, on the South side of Stone Mountain, near the lands of J. D. and H. J. Morgan." Is that the 200 acres that you refer to ?

A.- That is the 200 acres.

Q.- You think it is 200 instead of 300 acres ?

A.- I have been told that it is 200 acres; I don't know. The land was entered since I left Virginia.

Q.- When did you leave Virginia ?

A.- I left Virginia in the fall of 1877.

Q.- Do you know whether the heirs of Dr. Bales claim some land in Harlan County, Kentucky ?

A.- I do not.

Q.- Have you heard that they are making some investigations into a tract of land of about 200 acres on Tom's Fork of Puckett's Creek in Harlan County, Kentucky, that they think probably they own ?

A.- I have heard something of it.

Q.- I will ask you, in June, 1902, after my return from Virginia where I had been to look into this property, if I did not suggest to you that it was possible you owned the 200 acre tract, -



you and the other heirs of your father ?

A.- You did.

Q.- Did you know of this possible ownership of this property at the time you made the assignment ?

A.- I did not.

Q.- I will ask you if you intended by your deed of assignment to convey for the benefit of all of your creditors all of the property that you then owned or had an interest in ?

A.- I did.

Q.- If it is discovered that this property on the South side of the Cumberland Mountain in Lee County, Virginia, belongs to your father, and you a one-fourth of same, and if you own a one-fourth interest in the 200 acre tract in Harlan County, do you desire it to be subjected to the satisfaction of your debts as far as it will go ?

A.- I do.

Q.- In addition to this real estate that you assigned, you had some accounts, did you not ?

A.- Yes, sir.

Q.- Well, you state in your deed of assignment that they were worthless, I believe, or in your schedule of debts. What do you say about those accounts now ? Are they of any account ?

A.- They are of no account.

Q.- Not worth anything ?

A.- Worthless.

Q.- After you made your deed of assignment on the 24th day of February, 1902, did you furnish me a list of your creditors ?

A.- I did.

Q.- Do you remember whether that list included F. K. Wilson ?

A.- It did not.

Q.- Why did you not include F. K. Wilson among your creditors ?



A.- Because this debt was not due until about the 1st of March and the understanding was that it would be paid as soon as it matured and J. W. Bales failed to pay it and F. K. Wilson brought suit on the note.

Q.- And recovered judgment against you and J. W. Bales ?

A.- Yes, sir.

Q.- When was that note executed ?

A.- It was along about the 2nd or 3rd day of January; right at the first of January, 1902.

Q.- Had that note of F. K. Wilson been in existence prior to January, 2nd, 1902, when you signed it as security ?

A.- It had not.

Q.- Was it a new note or was it a renewal note ?

A.- I don't know whether it was a renewal or not. I had not been on it before.

Q.- When you became security on it for Joe Bales, what was the understanding ?

A.- It was a sixty days' note and it was to be paid when it matured.

Q.- When ?

A.- Paid by J. W. Bales. He failed to pay it at the time when it matured and F. K. Wilson then brought suit and got a judgment for the principal and interest.

Q.- The reason why you didn't list F. K. Wilson as one of your creditors was that you were security and Joe Bales was to pay it when it matured ?

A.- Yes, sir. When he failed to pay it and judgment was obtained on same, it was then listed as one of my debts and F. K. Wilson one of my creditors.

Q.- Dr. Bales, if you had gone ahead and undertaken to pay the Richmond National Bank debt of \$5000.00, or to secure it by mortgage, would you thereby have defeated all the rest of your creditors



in the collection of their debts ?

A.- I would.

Q.- That was what the Richmond National Bank wanted you to do, was n't it ?

A.- Yes, sir.

Q.- Did you make that assignment in order that all your creditors might receive their pro rata of your property on their debts ?

A.- I did.

Q.- Well, have all of your creditors been treated exactly alike in in the distribution of the property realized from this assignment ?

A.- Yes, sir.

Q.- At the time you made this assignment to me of all of your property, was the real estate assigned rented out for the year 1902, the year in which you made the assignment ?

A.- Yes, sir.

Q.- Do you know whether or not attorneys for the plaintiff, F. K. Wilson, received a pro rata distribution on the debt of F. K. Wilson after having urged a distribution in the Madison County Court ?

A.- I do not know certainly.

Q.- Do you desire that Mr. Wilson receive all of his pro rata on his claim out of your entire estate ?

A.- I do.

Q.- Did you reserve a homestead when you made your deed of assignment ?

A.- I did not.

Q.- I will ask you if you were not advised when you had this assignment in contemplation for the benefit of all of your creditors alike, that you might take up your residence at your home and thereby reserve a homestead ?

A.- I was.



Q.- What was your response to that, Dr. Bales ? That you wanted to pay your debts, or what ?

A.- I preferred giving up everything for the benefit of my creditors.

Q.- You did reserve the exemptions in the way of provisions for yourself and wife and little daughter, Kathleen, who is under twenty-one years of age, didn't you ?

A.- Yes, sir, I did.

Q.- That is all the reservation you made ?

A.- It is.

Q.- And some provender, under the statute, for one horse, didn't you ?

A.- Yes, sir.

Cross Examination by C. F. Burnam.

Q.- What property of yourself transferred by this deed of assignment has been sold and how much has it realized ?

A.- Well, the Kingston house and lot sold for \$2000.00. The store house and lot sold for \$108.00, I believe it was; my interest in it a half interest. The Corbin residence and lot sold for \$650.00. The Bell County land, - five hundred acres, - sold for \$2000.00. I think it was \$2000.00. That is all that has been sold.

Q.- Do you know how much was realized for the year 1902 out of those rents that you spoke of ? You say that the property in Madison was rented for that year ?

A.- The residence house and lot rented for \$75.00. The store house and lot was not rented. The partnership store house.

Q.- Was this deed of assignment that you made to Mr. Cobb sent to Lee County, Virginia, and recorded there ?

A.- Yes, sir, it was.



Q.- How long after it was made ?

A.- A very short time after. I don't remember; a very short time.

Q.- How long before you made this deed of assignment had you been threatened with suit by the bank in Richmond unless you made them a mortgage ?

A.- Three or four months, probably.

Q.- The note of Wilson was then in existence, wasn't it, at the time they were talking to you ?

A.- Not when they first commenced talking about bringing suit or wanting a mortgage.

Q.- The debt, then, of Wilson, was created after this interview with the Bank ?

A.- It was created in January and they began pressing along in the fall of the year, 1901.

Q.- Was there any supplemental schedule made out when your deed of assignment was recorded in the County of Lee in Virginia, of these lands that are now in dispute ? Did you have any supplemental mortgage or schedule made out or recorded there ? There has been no sale of any of the lands in Lee County ?

A.- No, sir, none at all.

Q.- Now, you have said that this deed of trust was sent there and recorded. Did you make out and have put of record any claim of ownership to any lands that were in that County not embraced in the deed itself ?

A.- I did not.

Q.- Well, then, the first intimation, if I gather from what you said, is this: that you found out only from the institution of this suit and the claim of Wilson that you had an interest in these lands he has tried to subject to the satisfaction of his judgment.

A.- It is only since his suit that I learned it.

Q.- Well, hadn't there been a copy of the petition sent to you or



to your attorney ?

A.- No, sir.

Q.- Had there been no copy of the petition sent to you ?

A.- No, sir.

Q.- What was the pro rata that was paid Moberley, if anything, on the Wilson debt ?

A.- I think it was fifteen per cent.

Re-Direct Examination by J. Tevis Cobb.

Q.- You said about four months before you made the assignment, the Richmond National Bank was pressing you either to pay their debt or secure it by mortgage. I want to ask you if they did not continue to press you for the payment of same or the security of same, up to the time you did make the assignment ?

A.- They did. In the first place, they insisted that I pay them the note. And I told them I could not pay it and then they wanted me either to pay it or to secure it.

Q.- How secure it ?

A.- By a mortgage. And I failed to do it and it went on til the 1st of January or in December, as well as I remember. They told me if I did not pay it or secure it by a mortgage, they would bring suit.

Q.- Well, it was by reason of this threat to sue you unless you secured it by mortgage that you made an assignment and because you wanted to pay your debts, as far as you were able.

Re-Cross Examination by C. F. Burnam.

Q.- You claim that there is a mis-description of the land that you say lies on the Cumberland Mt. made in this petition in describing it, as land lying on the Stone Mt. ? You say it is a mis-description of the land in the plaintiff's claim ?

A.- Well, it is on the Cumberland Mt., the land that I know anything about. The Stone Mt., - I don't know anything about the other.

*And further this witness with not*

*C. J. Bales*



Also the deposition of J. Tevis Cobb, taken September 29th, 1903, at the same place and for the same purpose as stated in the original caption.

The witness, J. TEVIS COBB, being first duly sworn, deposes and says:

Direct Examination.

Q.- Some time in December, 1901, and perhaps prior to that time, and on several occasions subsequent to December, 1901, the assignor, Dr. C. J. Bales, advised with me about making an assignment for the benefit of his creditors. He owed at that time a small number of debts but that small number aggregated something in the neighborhood of \$8000.00. He owned at that time a one-fourth interest in the five hundred acres of land situated in Lee County, Virginia, and a one-fourth interest in about five hundred acres in Bell County, Kentucky. The property in Virginia was thought then and is now thought to be valuable. It is full of iron ore, said to be of a very fine character. The property in Bell County, Kentucky, had some fine timber on it and was thought to contain coal. Dr. Bales was trying to hold these properties long enough to sell same at something like their fair value, in order to pay his debts. But, as he stated in his deposition, he was pressed so hard at the time by the Richmond National Bank, which had a debt against him of \$5013.93, with interest, and was threatened with suit unless he secured same to such an extent that he made an assignment, under my advice, for the benefit of his creditors. I refer to this deed of assignment and make it a part of my deposition. The assignment was made on February 24th, 1902. I at once had this deed recorded in the Madison County Court Clerk's office and as soon as practicable, I sent the deed, or had sent the deed, to Lee



County, Virginia and had it recorded. Dr. Bales owned a partnership interest, - a one-half interest, - in some Corbin property in Whitley County, Kentucky, and also a partnership interest in the Kingston property, - the store house that he has referred to. I sent this deed of assignment to Whitley County and had it recorded and also to Bell County and had it recorded. I do not know how the seal happened to be left off of the deed that went to Virginia, and personally, I do not know that it was not affixed to that deed; but if it was left off, it was a mistake and an oversight. Dr. Bales in the deed of assignment undertook to convey to me all of his property of every character and description for the benefit of his creditors, treating all alike. I quote from this deed of assignment, the original copy of which I now have before me : "This indenture, made and entered into this February 24th, 1902, by and between C. J. Bales of the one part, and J. Tevis Cobb, of the other part, both of Richmond, Kentucky, Witnesseth: That whereas the party of the first part, the said C. J. Bales, is indebted to various parties in different sums of money and is unable at present to pay them all off and is desirous to treat all of his creditors alike, Now, in consideration of the premises and one dollar cash in hand paid, the receipt whereof is hereby acknowledged, said first party, C. J. Bales, has sold and does hereby convey to the said second party, J. Tevis Cobb, in trust for the benefit of all of his creditors, the following property (describing the property at Kingston, Kentucky, the residence house and also the two lots upon which the said house is situated; also the lot in Corbin, Kentucky; also an undivided one-fourth interest in the Bales land in Bell County, Kentucky; also an undivided one-fourth interest in the land lying in Powell's Valley, in Lee County, Virginia; also all of his personal property.)

I was careful in my efforts to have everything that Dr. Bales



owned at the time of this assignment assigned to me. Dr. Bales (as I suppose is well known in Virginia), is an exceedingly honest man. Notwithstanding the fact that I was one of his creditors to the amount of six or seven hundred dollars, at the time he made the assignment, I felt it my duty to advise him that he could take up a residence in his residence at Kingston, Kentucky, and reserve his homestead, and I did so advise him; but he felt, and so expressed himself, that he wanted his creditors to have every dollar that he had except barely enough to furnish provisions for himself and family for one year and provender for one horse, and insisted upon making the assignment in this way. He reserved the exemptions for himself and family and provender for one horse and that is all he did reserve. He assigned to me all of his accounts and I think they are worthless; don't think anything can be made out of them. And I am satisfied that the only thing he had left after making that assignment was the exemptions under the Statute of Kentucky which prescribes same, which amounted to about \$180.00 or \$190.00. He has himself and wife and one little daughter about ten years of age. Everything else he turned over to me. Within the time prescribed by Statute, Dr. Bales furnished me a list of his creditors which was filed in the Madison County Court Clerk's office and which I refer to and make a part of my deposition, a copy of which will be filed with same. That list did not include the debt of F. K. Wilson. Mr. Wilson's debt was about due and Joe Bales, the principal in the note, had assured Dr. Bales that he would pay this debt when it matured; but failing to pay it, suit was brought on it against J. W. Bales, the principal, and C. J. Bales, the security, and judgment was obtained in the Madison Circuit Court; after which time F. K. Wilson was reckoned as one of the creditors of C. J. Bales. I did not



insist at the time this list was furnished to me that Wilson be reckoned as one of the creditors because I hoped that J. W. Bales would pay this debt and thereby lessen C. J. Bales' liabilities; knowing full well that if he did not pay it at the time, Wilson would be reckoned as one of Bales' creditors. At that time I had not advertized for debts against C. J. Bales' estate. I did in due time under the Statute, advertize for these debts for the length of time prescribed by the Statute, (which is, I think, four weeks), and I advertized for these debts in the Richmond Climax, a weekly paper published in Richmond, Kentucky; and I here quote from the Richmond Climax in the issue dated June 18th, 1902, this notice to creditors: It is as follows: "All parties having claims against Dr. C. J. Bales that arose prior to his assignment are requested to present same, verified as required by law, to the undersigned, on or before August 15th, 1902, or same will be barred. J. Tevis Cobb, Assignee." My recollection is that before this notice to creditors (and I do not think that this issue that I read from was the first issue that contained this notice), I advised with W. S. Moberley, a member of the firm of Burnam & Moberley of this city, who represented F. K. Wilson, and told him to present his claim to me verified as required by law. These gentlemen (Messrs. Burnam & Moberley) are able and vigilant attorneys and they presented the claim of F. K. Wilson, verified as is required by law, on August 25th, 1902, as is shown by my record of debts against C. J. Bales. This debt of Mr. Wilson from the time of J. W. Bales' failure to pay same, was reckoned as one of C. J. Bales' liabilities and was entered upon my records as assignee of C. J. Bales to receive its proportion of all of the funds realized from the assignment of C. J. Bales.



At the time that this assignment was made, I accepted same as appears at the foot of the deed where occurs the following language: "I accept the foregoing trust. Signed, J. Tevis Cobb." At the time that this deed of assignment was made to me, Dr. Bales had already rented out the Kingston property, that is, the residence portion of it, for the year, 1902. The store house and lot which is a partnership property, had not been rented out. It was undesirable and not very easy to be rented. The Corbin property was rented out for the year 1902. I did not proceed to get an order for the sale of this property at once because I wanted to get all of the debts in, which I advertized for, as soon as practicable, and because this property was rented out. And I did not want to sell it while it was rented out because purchasers of property do not like to buy property that is rented out. They want possession as soon as they buy and it makes the property bring more if they get possession at the time they buy. I got Mr. S. Maupin, who was tenant of the residence property at Kingston to agree to vacate that property in October and I accordingly advertized it for sale in October, - my recollection is the 17th, - and sold it on that day and gave possession of it. I got for it \$2000.00 by bidding on it myself with Col. Caperton in order to make it bring all it would. I say bidding on it myself. I didn't bid on it but Col. Caperton, the President of the Richmond National Bank, representing the \$5000.00 note, bid on it and I agreed with him that if he would bid on it and run it up to something like its value and it was knocked off to him, I would go in with him and take it with him at the price knocked off. In that way we made the property bring \$2000.00. On the same day I sold the store house and lot in Kingston property. It brought \$108.00 by hard effort on the part of the



auctioneer. That is my recollection as to the amount of it. The bond shows. Sometime in November following, I sold the Corbin property. It brought, my recollection is, \$650.00, and I considered all these properties well sold. The Virginia property was what all of us considered valuable property. It was an iron ore property and contained, as we thought, immense quantities of it. I represented Dr. Bales, owning a one-fourth interest in it; Mrs. J. B. McLin owning a one-fourth interest; Mrs. Hattie Fulkerson another interest; and White Bales another interest. It was difficult to agree upon a sale of the property. None of the three named heirs wanted to sell their interest. They wanted to divide and not sell and I thought the creditors of Dr. Bales would get the worst of it by a division and resisted a division. I was all the time looking about for a purchaser for the interest that Dr. Bales had assigned to me. I had corresponded with a firm in Pittsburg and also with parties in Minnessota who were in the business of buying and selling iron ore mines; and I had an expert mining engineer come here and with the endorsement of Col. Caperton, representing the Richmond National Bank, and Mr. W. S. Moberley of the firm of Burnam & Moberley, sent him to Virginia to examine and inspect this property with a view of putting it on the market with some of the firms of the East. He made a splendid report as to the property. He said it was valuable but his report showed that it would take some money to open up the mines. I could find no purchaser for this property, so I concluded that in June of 1903, just after the adjournment of our Courts, I would go out to Virginia and I did go out there, undertaking to get an option on all of the property so that I could take it East and sell it; but I could get no option. Parties owning these other fourths would not give or sell an option on this



property. About this time the suit in Virginia was instituted and stopped all negotiations with regard to the sale of this property. Sometime in the spring of 1903, through the instrumentality of certain parties in Virginia who were interested in the property in Bell County, it was sold for \$2000.00 and I got, as the assignee of Dr. Bales, \$500.00 for my interest. Whilst I was out in Virginia, Mr. J. B. McLin told me that he thought the Bales heirs owned a half interest in a two hundred acre tract in Harlan County, Kentucky, on Tom's Fork of Puckett's Creek. I immediately set about making some inquiries about it and tried to find out whether or not the Bales heirs did own this interest. It seems to be a piece of land that Dr. Bales' father patented and the patent had been misplaced and all trace of it had been lost until Capt. McLin (I think it was he), discovered papers that looked like the Bales' heirs might own a half interest in that tract of land; but this matter has not been determined nor in any way definitely ascertained. The Bales' heirs may own an interest in it and they may not. And the same is the case about the tract of land spoken of in Complainant's bill. I don't know, and Dr. Bales doesn't know, whether the Bales heirs own the 300 acre tract referred to or not. But however the case may be, he is willing and has always been willing and anxious that all of this property be sold to satisfy his debts and when he made his deed of assignment, he undertook to convey everything he had and did convey everything that he thought he owned.

Now, as soon after this assignment was made as I could and within the time prescribed by the Statute, I filed a schedule of the creditors, giving the respective amounts of their claims and their post office addresses; and then I advertised, as I have stated before, for claims to be presented. I



made the sale of the property as soon as was practicable under the circumstances and as soon as was advisable. The money that was realized from the sale of the Kingston property, which was made in October, 1902, was due in April, 1903. As soon as it was due, the creditors, and especially F. K. Wilson through his attorney, Mr. W. S. Moberley, urged a distribution of the funds. As the assignee of Dr. Bales, my position was that I would as soon distribute that money as not; but I thought it best perhaps to wait until the \$650.00 which was due in May would come in from the Corbin property. But Mr. Moberley urged the distribution of what we then had on hand, - at least fifteen per cent of it, - and I interposed no serious objection. Accordingly, an order was entered directing the distribution of fifteen per cent of money on hand to the various creditors of Dr. Bales. That order was entered on the 12th day of May, 1903, and was recorded in Book "Z", page 105 of the Madison County Court Clerk's office, and I hold the original order now in my hands. It reads as follows:

"In re C. J. Bales' Assignee. Order. It is ordered that J. Tevis Cobb pay out to the various creditors against the estate of C. J. Bales, fifteen per cent of their respective claims."

I should say that within a few days after the assignment was made to me, the suit of C. J. Bales' Assignee was entered on the docket of the Madison County Court Clerk's office and has been there pending ever since, such orders as were proper being entered from time to time. When I say "such orders," I mean orders directing advertisement for claims; orders directing sales of these various properties; an order directing distribution of funds and such other orders as are incident to a trust of this nature.

Under this deed of assignment and under this order



of distribution, after Mr. Wilson had filed his claim on August 25th, 1902, and same had been audited, I distributed to his attorneys, Burnam & Moberley, on May 6th, 1903, fifteen per cent of his claim. The claim at that time amounted to \$1092.45 and I gave to them my check for \$163.87 which was fifteen per cent of said claim, and hold three receipts of the said attorneys for said payment. They accepted said payment on the 6th day of May, 1903, before the institution of this suit and after insisting, as I have before stated, upon a distribution. My payroll shows this payment and the stub of my check book shows receipt.

Dr. Bales has not been the owner of this undivided interest in any of this property since the deed of assignment on February 24th, 1902. He did not own same nor any part thereof at the institution of this suit. Instead

Instead of the deed of assignment being made to hinder, delay and defraud creditors of Dr. Bales, the deed was made to protect all of the creditors and that all might receive their respective portions of the assets of Dr. Bales. The deed of assignment was made expressly that all creditors of Dr. Bales might receive their pro rata part of his estate.

The aggregate amount of Dr. Bales' indebtedness was between eight and nine thousand dollars; and Dr. Bales felt and I felt that I ought to be able to sell the land in Virginia for something in the neighborhood of \$2500 or \$3000, though not near that much may be realized on it on account of the fact that it is a joint interest. It is more difficult to handle than it would be if owned individually by some one person. But the delay in selling that property was due to these facts that I have mentioned. If I could have sold it for what I thought it was worth, the estate of Dr. Bales would have paid considerably



more than I now think it will pay. I think it will pay somewhere in the neighborhood of twenty-five or thirty cents on the dollar, perhaps a little more; all depending upon the price we get for the property lying in Powell's Valley and the question whether or not we own the property on the South of the Cumberland Mt. referred to in complainant's bill, and the property in Harlan County referred to in Dr. Bales' deposition. Of course, it is quite problematical what these various properties will bring.

My contention is that this deed of assignment vested in me all of the property that Dr. Bales owned of every character and description, real, personal and mixed. That was his intention. We discussed the matter fully and he thought at the time he made the assignment that he was definitely specifying all the property that he did own and, so far as his knowledge went, he was specifying in this deed of assignment everything that he owned. It is not yet certain that he ever owned any interest in the property in Harlan County or the property on the South of the Cumberland Mt.; but if he ever did own it, this deed of assignment was intended to convey the whole thing for the benefit of all the creditors alike. That was the only object of the assignment: that his property might be taken in a legal way, his estate settled and sold and the proceeds applied to the payment of the debts of Dr. Bales in proportion to the respective amounts.

(The plaintiff excepts to so much of the latter part of this deposition as undertakes to speak of Dr. Bales' intentions because they have to be gathered from the written instrument itself and not by outside testimony.)



I mention these facts because Dr. Bales and I discussed this matter before I drew this deed of assignment and discussed it at length. He was afraid that the Richmond National Bank would sue him and would gain an undue advantage over his creditors, and he wanted to treat all of them alike and I was careful to go over the different properties with him and tried to ascertain everything that he had; and I know that he tried to convey to me everything he had for the express purpose of settling with his creditors as far as he was possible. Out of the property that he then assigned and then knew he had, F. K. Wilson has received his pro rata, and he will receive, as soon as this suit is terminated and this property in Powell's Valley can be sold, whatever is coming to him from that source; and if the land in Harlan County belongs to the Bales heirs, he will get his proportion of that, as likewise he will get out of any land lying on the South side of the Cumberland Mt. I have endeavored to wind up this trust with as much dispatch as possible. I think it was on the day that the assignment was made to me that a proceeding was instituted in the Madison County Court looking to a settlement of the trust; and said proceeding has ever since pended there and is now pending there, and under this proceeding the plaintiff, F. K. Wilson, has received his \$167.87, or whatever the amount is.

I desire to say that Jesse Cobb and I are two entirely different persons. Jesse Cobb is the County Court Clerk of this County, regularly elected and now holding his office, and I am the County Attorney, regularly elected and now holding my office and this is my third consecutive term. He and I are not the same person. We are not very closely related. My name is Jesse Tevis Cobb and his name is Jesse Cobb. I was named after an uncle of mine and he was named after his father



and grandfather. His father and grandfather were related to my uncle after whom I was named, but were not the same person.

I want to say that this Corbin property and the store house at Kingston was partnership property, - Drs. H. B. Kincaid and C. J. Bales owning these properties jointly, - and they had owned them for several years prior to the assignment. At one time they were in partnership and those two properties were part of the partnership property. Before I could sell the partnership property I had to get, or did get, a power of attorney from H. B. Kincaid and an obligation from him that he and his wife would join in a deed to the property at any time I could succeed in making a sale of same. So, after I did make a sale of the partnership store house and the Corbin residence property, I prepared the deeds and had to send all over the country to get Kincaid and his wife to sign and acknowledge same and then Dr. Bales and his wife had to sign same and I signed same; all of which has been done, the deeds have been accepted and recorded and the money paid therefor. It is possible that all of this fund arising from the sale of this partnership property will be required to pay off partnership debts. I don't know how that is yet.

Cross Examination by C. F. Burnam.

Q.- Have you made deeds to the purchasers of the Kingston and Corbin properties ?

A.- Yes, sir, I have.

Q.- Did Dr. Bales and his wife unite in this conveyance ?

A.- Yes, sir, they did.

Q.- Both of them ?

A.- Yes, sir.



Q.- When you went to Virginia, did you make any investigations as to the title to that property, or try to ascertain what land he did own ?

A.- Yes, sir, I did. Capt. J. B. McLin, who is well known in Lee County, Virginia, gave me all the information I could get. He is the husband of one of the heirs to this land. It seems that the father of Capt. McLin's wife and of all these other heirs patented this land at a very early date and had been in continuous possession ever since the patent. I have no doubt about the title; I think it is perfectly good. It was while I was in Virginia that Capt. McLin suggested to me that some matters had been reported to him that led him to believe that Mr. Bales, the father of these various heirs, owned in partnership with one Mr. Marcum (I think it is), a tract of some two hundred acres of land in Harlan County that he thought ought to bring seven or eight hundred dollars. But he did not suggest anything to me about this 300 acre tract that they talk about in this bill on the South side of the Cumberland Mt. I knew nothing about this at the time and neither did Dr. Bales.

Q.- Did you meet the complainant in this suit while you were there ?

A.- No, sir, I did not. I didn't go to Jonesville. I went to Rose Hill, which is in Lee County, the same County in which Jonesville is situated, and visited Capt. McLin. My object was to try to get from him or his wife, as one of the owners of this land, a fair offer for this land and come back and confer with the creditors; and if they thought it best and most advisable, to sell it at the price he would offer. But I couldn't get anything satisfactory from Capt. McLin. I think he was hoping to get it for as little a price as possible. He wants the property but he wants to get it for a little or nothing.

*And further this witness can not*

*J. Lewis Cobb*



(The plaintiff takes a general exception to as much of this deposition as the Court thinks incompetent.)

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Also the deposition of JESSE COBB, taken at the same time and place and for the same purpose as stated in the foregoing caption. The witness, Jesse Cobb, being first duly sworn, deposes and says:

Direct Examination by J. Tevis Cobb.

Q.- Please state your name, your age, your residence and your present occupation ?

A.- My name is Jesse Cobb; my age is forty-one years and my occupation is that of Clerk of the County Court of Madison County, Kentucky; my residence is Richmond, Kentucky.

Q.- When were you elected to the office of County Clerk ?

A.- I was elected in November, 1901.

Q.- When did you assume the duties of the office ?

A.- The first Monday in January, 1902.

Q.- Are you, as the clerk of the Madison County Court, custodian of the records of the County Court of Madison County, Kentucky ?

A.- I am.

Q.- I will ask you if a deed of trust or assignment from Dr. C. J. Bales to J. Tevis Cobb was filed in your office, and if so, when ? Please examine the record and answer from same.

A.- I find from an examination of the record that a general deed of assignment was made by Dr. C. J. Bales to J. Tevis Cobb on February 24th, 1902, and same was filed in my office for record on February , 1902, and was duly recorded, after having been duly acknowledged by Dr. C. J. Bales.

Q.- Was a proceeding instituted in the County Court of Madison County, Kentucky, looking to the settlement of this trust ?



A.- My record shows that on February 25th, 1902, J. Tevis Cobb appeared in open Court, entered into bond with H. H. Colyer as his surety, which bond was approved by the Court. He then took the oath required by law. And at that time this proceeding was instituted, looking to the settlement of the trust.

Q.- I ask you if the order of sale of any of the properties assigned by Dr. Bales was obtained by the assignee, J. Tevis Cobb, in your Court ?

A.- There was. Said order was obtained on the 1st day of September, 1902, and is entered in Order Book "Y", page 629 of the Madison County Court Clerk's office. This order directed the assignee to sell the residence property in Kingston, Kentucky, and also the store house and lot in Kingston, Kentucky; also the house and lot in Corbin, Kentucky. The property in Kingston, Kentucky, was directed to be sold on the 17th day of October, 1902, and the Corbin property to be sold some time thereafter.

Q.- Did or not the assignee make a report of the sale of said properties ?

A.- He did make a report of the sale of the residence property and filed same in my office on October 21st, 1902, and the said report is now of record. He likewise, on January 5th, 1903, reported the sale of the store house property and on the same day reported the sale of the property in Corbin, Kentucky; all of which reports were confirmed. I refer to these various reports and orders and make them a part of my deposition, and if it is desired, I will file copies of same.

Q.- Was an order of distribution of the proceeds of these sales obtained in your Court ?

A.- There was. It was obtained on the first Monday in May, 1903.

Q.- Is the case of Dr. Bales' assignee still pending in your Court ?

A.- It is.



Q.- What relationship are you to J. Tevis Cobb ?

A.- I can't tell you.

Q.- Are you one and the same person ?

A.- No, sir.

Q.- Your people came from North Carolina and mine came from Virginia, didn't they ?

A.- They so said. I know nothing about it.

Q.- Are these records that you have testified to correct ?

A.- Yes, sir, they are correct.

Q.- And true ?

A.- Yes, sir.

*Jesse Cobb att  
Madison County Court*



State of Kentucky,)               Set.  
County of Madison.)

I, S. M. Templeman, a notary public within and for the County of Madison, State of Kentucky, certify that the foregoing depositions of C. J. Bales, J. Tevis Cobb and Jesse Cobb were taken before me at the times and place stated in the caption; that each of said witnesses was duly sworn before giving his deposition; that each of said depositions was written by me in stenographic notes in the presence of said witnesses and was then transcribed by me and was read to and subscribed by each witness in my presence.

Dr. C. J. Bales was present at the taking of his deposition and so was J. Tevis Cobb representing the defendants herein; and Major C. F. Burnam, of the firm of Burnam & Moberley, attorneys, was present representing the plaintiff; but said plaintiff was not present in person; J. Tevis Cobb was present at the taking of Jesse Cobb's deposition; the said Major Burnam stated that he didn't care anything about the deposition of Jesse Cobb and was not present at the taking of same; but he agreed that the said deposition might be taken on the 29th day of Sept., 1903, and at the place named in the caption.

Given under my hand and official seal this September  
29th, 1903. My commission expires January 6th, 1904.

S. M. Templeman,  
Notary Public within  
and for Madison Co., Ky.



To Frank K. Wilson,

Take notice that we shall, on the 25 day of September 1903,  
at the law office of J. Tevis Cobb on Main St., next to the Richmond  
National Bank, in Richmond, Ky.,

between the hours of 8 A. M. and 8 P. M., on that day, proceed to take the depositions  
of W. R. Shackelford, J. T. Cobb, N. B. Turpin, W. S. Hunly, Jesse Cobb and Bob Terrill  
and others, to be read in evidence in their behalf,

in a certain suit depending in the Circuit court for the County  
of Lee wherein you are Plaintiff  
and we and an other are defendants,

and if from any cause, the taking of the said depositions be not commenced on that day, or, if commenced, be not concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

Very respectfully,

By J. Tevis Cobb and C. J. Bales,  
*R. L. Cunningham* Adly



J. Tevis Cobb, et al,

ads<sup>'s</sup>.

NOTICE TO TAKE  
DEPOSITIONS.

Frank K. Wilson.

Pennington Bros. p. q.

Executed Sept. 13.  
1903 by delivering  
to Frank K. Wilson a  
true copy of the within  
notice.

J. B. Hall S.S.  
for N. J. Milham & Co



In the circuit court for the  
County of Lee, State of Va.

Frank K. Wilson,           Plff.

VS.   DEPOSITIONS FOR DEFTS.

J. Tevis Cobb, Trustee,

C. J. Bales,           Defts.

Received by mail in good  
condition and filed Oct  
1st 1903.

A. B. Munsey Clerk

Notary fee - \$10.40  
paid by J. T. Cobb -



To the Hon. H. A. W. Skeen, Judge of the circuit court, for Lee county, Virginia.

Your undersigned commissioner, in the chancery cause of F. K. Wilson, vs. C. J. Bales, et al. reports; that pursuant to a decree entered in said cause at the February term of your honor's court, that he, on the 30th day of April, 1904, at the front door of the court house, proceeded to sell the land in the bill mentioned and described as C. J. Bales' interest in the Bales Mill property and C. J. Bales' interest in an eighty acre tract of land, situated in Lee county on the South side of Cumberland Mountain near Chadwell's Gap, after having advertised the same for 30 days according to said decree, *at* which sale B. F. Kincaid became the purchaser of both ~~x~~ tracts or interest in both tracts, at the sum of forty one and 50/100 (\$41.50) dollars, he being the highest and best bidder. This amount barely paid the costs and commissions in said cause. Said purchaser paid your commissioner the full amount of the purchase money.

Respectfully submitted.

*M. G. Ely*  
*Commissioner*



F. H. Wilson,  
vs { Report of sale,  
C. J. Babs et als

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Filed May 7th, 1904.  
H. C. Haring  
Clerk



Virginia,

At a Circuit Court continued and held for Lee County, at the Court-house thereof on Wednesday the 17th day of February 1904.

F. K. Wilson

Complainant.

vs

) In Chancery

C. J. Bales, J. W. Bales & J. T. Cobb, trustee, Defendants,

This cause came on this day to be heard upon the papers formerly read therein, the depositions of witnesses, the demurrer of the defendants and motion of J. T. Cobb trustee, to quash the attachment as to the real estate conveyed to him by C. J. Bales and the attachment of the plaintiff against a tract of land containing 80 acres situated near Caylor, Virginia on the South side of Stone Mountain near the lands of J. D. & J. H. Morgan, and what is known as the Bales Mill property, and was argued by counsel. On consideration of all of which the motion of the said J. T. Cobb trustee to quash the said attachment as to said real estate conveyed to him, as trustee, is hereby sustained and said attachment as to said land is hereby quashed and the said bill of the said Complainant as to said J. Tevis Cobb is hereby dismissed, and it is adjudged, ordered and decreed that the said J. T. Cobb trustee, recover of the plaintiff his costs in this behalf expended, including an attorneys fee for \$15.00 to be taxed by the Clerk and all other costs incurred by him in the prosecution of this suit. It is further adjudged, ordered and decreed that the attachment of the said plaintiff as to the said 80 acres situated as aforesaid, and the said Bales Mill property and the same is hereby sustained. And the said plaintiff will recover of the said J. W. Bales and C. J. Bales the sum of \$1000.00 with interest thereon from the 7th day of January 1902, until paid, and the costs of this suit subject to a credit of \$167.87 as of Jan. 1, 1903, and M. G. Ely, who is hereby appointed a special Commissioner for the purpose will, after having executed bond before the Clerk of the County Court in the penalty of \$500.00 conditioned as the law requires, and after having



advertised the time, terms and place of sale for at least thirty days by printed notices posted at three public places in Lee County proceed to make sale of the said land attached on as aforesaid, at public outcry to the highest bidder for cash in hand. And he will report his action to this Court, and this cause is continued.

A Copy,    Teste: W. G. Ewing Clerk.



F. K. Wilson

vs

C. J. Balus

Mr. G. Ely

Commissioner

Executed Mar. 29,  
1904, by delivering  
a copy of the within  
to Mr. G. Ely in person  
P. M. Ball  
S. L. G.

A copy  
Test:  
Clerk.

will report his action to this Court, and this cause is continued  
at public outcry to the highest bidder for cash in hand. And he  
proceed to make sale of the said land attached on as aforesaid,  
days by printed notices posted at three public places in Lee County  
advertised the time, terms and place of sale for at least thirty



In the Circuit Court of Lee County, Virginia. June 17th'1903.

Frank Wilson, Plaintiff,

Against) In Chancery.

J.W. & C.J. Bales, Defendants.

The object of this suit is to recover of the defendants, J.W. & C.J. Bales the Sum of \$1000.00 with interest from the 9th'day of January. 1902, <sup>the said</sup> and to attach the estate of C.J. Bales, situated in Lee County, Virginia, and to subject the same to the payment of Plaintiff's debt. Said estate consists of a one-fourth interest in a 500 acre tract of land in the Poor Valley and bounded by the lands of Mary McLin, W.F. Gibson and others, and a one-fourth interest in what is known as the "Bales Mill" property, and one-fourth interest in a tract of 80 acres in the Poor Valley on the South side of Stone Mt. in Lee County Bounded by the lands of C.N. Morgan and others.

C.J. Bales, is the name of the person whose estate is intended to be affected. Witness my hand and seal this the date above written.

M. G. Ely, Atty. for (Seal)

Virginia, Lee County to wit:

I, B.M. Morgan Clerk of the County Court of Lee County in the State of Virginia do certify that M.G. Ely Attorney for Frank Wilson, whose name is signed to the foregoing Lis Pendens, dated June the 17th' 1903, has acknowledged the same before me in my County and State aforesaid, and the same is admitted to record.

Given under my hand this the 17th'day of June, 1903.

B. M. Morgan Clerk



Fraugh Wilson  
vs. E E Liv Pindus  
E J Robo and other

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Recorded in Deed  
Book No 39 page 569

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Examined June 19/903

Deduct

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Clerk 75 cts.



Wilson  
v

Bales et al.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County, Va.

The joint motion of J. Tevis Cobb and C. J. Bales to quash and abate an attachment sued out on a bill in chancery ~~xxxx~~ filed in this court, by F. K. Wilson, against them and one J. W. Bales.

For grounds of their motion say:

That said attachment issued in said cause should be quashed and abated because,

- (1) The allegations of the bill of the said complainant show that J. Tevis Cobb is a non resident of this state and a proper party to this suit, but said complainant has not made, as required by law any affidavit that said Cobb is a non resident, nor has said complainant had issued any process as to said Cobb, nor has any process been served upon or accepted by said Cobb;
- (2) The attachment issued in said cause and indorsed by the clerk of this court was done and issued by the clerk thereof without it being first supported by the affidavit required by sections 2964 and 2959 of the code of Virginia;—in this the affiant fails to swear in his affidavit, that he believes the plaintiff is entitled to or ought to recover a certain sum at least against said defendants in said cause or either of them;
- (3) The attachment endorsed by the clerk on the ~~attachment~~ process issued in this cause is not addressed to any officer, sheriff or constable of this county:—every attachment issued is required by section 2965 of the code to be addressed to the sheriff or some constable of the county wherein it issued;
- (4) The plaintiff has had an order of publication against C. J. Bales and J. W. Bales before his attachment was returned executed; and also the clerk has failed to post the order of publication at the front door of the court house of Lee County, and on the first day of the next County Court next after said order of publication was directed;—see secs. 2979 & 3231, 86 Va. 501.
- (5) And for various other reasons to be assigned at bar and which are apparent upon the face of the said attachment.

Pennington Bros., P.D.



C. J. Davis & as

ans. 3 Moten to  
3 Quash  
7 Attochment

F. K. Wilson

---

Filed in open court, and by  
leave thereof July the 10<sup>th</sup>  
1903. A. B. Mursey Clerk



In the Clerk's Office of the Circuit Court of the County of  
Lee on the 4th day of June 1903

against Frank K. Wilson Plaintiff

In Chancery

J. M. Bales and L. J. Bales Defendants

The object of this suit is to recover of the defendants the sum of \$1,000.00  
with interest thereon from the 7th day of January 1902.  
till paid, and to attach the real estate of L. J. Bales,  
situated in Lee County, Virginia, and subject the same  
to the payment of the debt aforesaid.

And an affidavit having been made and filed that the defendants, J. M. Bales and  
L. J. Bales  
are not residents of the State of Virginia, it is ordered that they do appear here within fifteen days  
after due publication hereof, and do what may be necessary to protect their interest in this suit. And  
it is further ordered that a copy hereof be published once a week for four weeks in the South-West  
Virginian, and that a copy be posted at the front door of the court-house of this County  
on the first day of the next term of the County Court.

A copy—Teste:

M. G. Ely

p. q.

A. B. Mursey

Clerk.



Frank K. Wilson

vs. {

ORDER OF  
PUBLICATION.

J. M. L. J. Bales

I, A. B. Munsey clerk of  
the Circuit Court for Lee  
County do hereby certify  
that I posted a copy of the  
order of Publication at the  
front door of the Court-  
house of Lee County  
on the 1st day of the June  
term of the County Court  
of said County.

Given under my hand  
this the 16<sup>th</sup> day of June 1903

A. B. Munsey Clerk



In the Clerk's Office of the Circuit Court of the County of  
Lee

F. H. Wilson

Plaintiff

against

J. W. Bales and  
C. J. Bales -

Defendant

This day M. G. Ealy personally appeared  
before me, A. B. Mursey Clerk of the said Court,  
and being duly sworn, made oath that J. W. Bales and C. J. Bales,

defendants in the said suit are not resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 4<sup>th</sup> day of June,

1903.

A. B. Mursey Clerk



*H. K. Wilson*

us. { AFFIDAVIT FOR ORDER  
OF  
PUBLICATION.

*J. M. Bales et al*

*M. H. Ely* p. q.

*Filed June 4th 1903*

*A. B. Munsey Clerk*



The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon *J. M. Bales and L. J. Bales*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules  
to be held for the said Court, on the *3rd* Monday in *June* 190*3*,  
to answer to a bill in chancery, exhibited against *them* in our said Court by  
*Frank R. Wilson*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at  
the court-house, the *4th* day of *June* 190*3* and in the  
*12 7th* year of the Commonwealth.

*A Copy*  
*A. B. Munsey Clerk*  
*Teste, A. B. Munsey Clerk*



The necessary affidavit having been made and  
filed, the officer to whom this process is directed, will  
attach the real estate owned by C. J. Bales, situated  
in Lee County Va

Given under my hand, this the 4<sup>th</sup> day of June  
1903.

A. B. Munsey Clerk

Form No. 300½

SUBPOENA  
IN  
CHANCERY.

vs.

p. q.

Rules

To

Lee Circuit Court.



The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon *J. M. Bales and L. J. Bales*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules  
to be held for the said Court, on the *3rd* Monday in *June* 190*3*,

to answer to a bill in chancery, exhibited against *them* in our said Court by  
*Frank R. Wilson*

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at  
the court-house, the *4th* day of *June* 190*3* and in the  
*127th* year of the Commonwealth.

*A copy*

*A. B. Munsey Clerk*

*Teste: A. B. Munsey Clerk*



The necessary affidavit having been made and  
filed, the officer to whom this process is directed  
will attach the real estate owned by L. J. Bales  
situated in Lee County Va.

Given under my hand, this the 4<sup>th</sup> day of June  
1903.

A. B. Munsey Clerk

Form No. 300½

SUBPOENA  
IN  
CHANCERY.

vs.

p. q.

To Rules

Lee Circuit Court.



The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon *J. M. Bales, C. J. Bales,*

*J. Lewis Cobb Trustee and B. F. Kincaid*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules

to be held for the said Court, on the *3rd* Monday in *August* 190*3*,  
*an amended*

to answer to a bill in chancery, exhibited against *them* in our said Court by  
*Frank K. Wilson*

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at

the court-house, the *16th* day of *July* 190*3* and in the  
12 *8th* year of the Commonwealth.

*A. B. Munsey Clerk*



Frank K. Wilson

SUBPENA  
IN  
CHANCERY.

vs.

J. W. Bales et al

M. H. Ealy

p. 9.

To 2nd August Rules

1903, Lee Circuit Court.

Executed July 20-1903  
by delivering a true copy  
of the within subpoena  
to J. W. Bales et al  
at 12 1/2 Springtown D.C.  
for W. J. Muleham S. L. C.

The necessary affidavit having been made and filed the  
officer to whom this process is directed, and attach the  
back the seal and personal estate of J. W. Bales et al  
in Lee County Virginia  
Return under my hand this the 16th day of July  
1903.  
not executed by J. W. Bales et al, the  
Bales, they being now residents of the State of Va. The  
J. W. Bales et al, D. B. Springtown D.C. for  
W. J. Muleham S. L. C.

Executed by levying this attachment on the one fourth undivided  
interest of C. J. Bales in a tract of land situated in Lee County, Va. near Rose  
Hill said tract containing about 500 acres, and is bounded on the north by  
the top of Cumberland Mt. on south side by Poor Valley ridge, on east  
by lands of Mrs. Mary McLean on west by lands of W. H. Gibson, and also  
joined on the one fourth interest of C. J. Bales, in what is known as the  
Bales Mill property containing four acres, near Ewing, Va. and joined on one  
fourth interest of C. J. Bales in a 80 acre tract of land situated on  
south side of Cumberland Mt. bounded by lands of J. D. Morgan  
Braithwaite and others. This July 16th, 1903  
and no tenant being in possession  
of any of said lands.

D. B. Springtown D.C.  
for W. J. Muleham S. L. C.



**CERTIFICATE OF  
ORDER OF PUBLICATION.**

We, C. S. Cox and C. R. Sprinkle,  
Editors of the SOUTHWEST VIRGINIAN,  
a weekly newspaper published at Jones-  
ville, Lee county, Virginia, do hereby  
certify that the annexed notice was  
published in said paper once a week  
for four successive weeks, commenc-  
ing on the 4th day of

June 1903.  
C. S. Cox  
C. R. Sprinkle } EDITORS.

FEE, \$ 5.80.

**Order of Publication.**

VIRGINIA—In the Clerk's Office of the  
Circuit Court of the County of Lee on  
the 4th day of June, 1903.

Frank K. Wilson, Pl'ff. }  
vs. } In Chancery.  
J. W. Bales and C. J. }  
Bales, Deft's. }

The object of this suit is to recover of the  
defendants the sum of \$1,000.00 with in-  
terest thereon from the 7th day of January  
1902, till paid, and to attach the real estate  
of C. J. Bales, situated in Lee County,  
Virginia, and subject the same to the pay-  
ment of the debt aforesaid. And an affida-  
vit having been made and filed that the  
defendants J. W. Bales and C. J. Bales are  
not residents of the State of Virginia, it is  
ordered that they do appear here within  
fifteen days after due publication hereof,  
and do what may be necessary to protect  
their interest in this suit. And it is further  
ordered that a copy hereof, be published  
once a week for four weeks in the South-  
west Virginian, and that a copy be posted  
at the front door of the court house of this  
County on the first day of the next term of  
the County Court. A copy—Teste:

A. B. MUNSEY, Clerk.  
M. G. Ely, p. q. 6-4



J. K. Wilson  
or. & Du Chy.

J. W. Bales it als

Order of Publication  
Printer's Certificate

Filed June 27<sup>th</sup> 1903.

A. B. Munsey Clerk

Printer \$5.80



F. K. Wilson

v.  $\frac{3}{3}$  In Chancery

C. J. Balch & Co

1903. 2nd June rules Bill  
filed + O. P. + Cont'd  
" 1st July rules Cont'd for  
O. P. to Complete.  
" 2nd July rules O. P. Complete  
+ Cause set for hearing

tax costs and some  
exceptions F. K. Wilson

m. l. 7.440  
Ecly. 2.50  
Shuff 2.00  
O. P. 6.80  
atty. 15.00  
cont. clke. 1.00

36.74  
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Est. 41.74

French/Kimball  
\$41.50  
April 30th 1909